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STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

December 21, 2004

William H. Bishop
Director
Idaho Bureau of Homeland Security
STATEHOUSE MAIL

Dear Mr. Bishop:

This letter is in response to your recent inquiry of this office regarding the liability of individuals who assist first responders. You asked a series of interrelated questions related to the immunities of emergency responders in a variety of situations. As you are aware, it is impossible to give a specific answer to your questions, as there are a number of variables that arise in any given emergency situation. Idaho has a comprehensive series of laws, designed to protect first responders, volunteers, and "good Samaritans." It would appear that absent an act on the part of the responder that is wanton, malicious, or grossly negligent, these protections would sufficiently shield a responder from liability. (See, for example: Idaho Code §§ 5-330; 5-331; 5-332; 6-929; 39-7113; 39-4421; 39-7701-7705; 46-1017; and 54-1804.) For your reference, copies of these statutes are included with this letter.

I hope you find this letter helpful. If you would like to discuss this matter more fully, please contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "B. Kane", with a long horizontal flourish extending to the right.

BRIAN P. KANE
Deputy Attorney General

BPK/mdw

Enclosures



Idaho Statutes

TITLE 5
PROCEEDINGS IN CIVIL ACTIONS IN
COURTS OF RECORD
CHAPTER 3
PARTIES TO ACTIONS

5-330. IMMUNITY OF PERSONS GIVING FIRST AID FROM DAMAGE CLAIM. That no action shall lie or be maintained for civil damages in any court of this state against any person or persons, or group of persons, who in good faith, being at, or stopping at the scene of an accident, offers and administers first aid or medical attention to any person or persons injured in such accident unless it can be shown that the person or persons offering or administering first aid, is guilty of gross negligence in the care or treatment of said injured person or persons or has treated them in a grossly negligent manner. The immunity described herein shall cease upon delivery of the injured person to either a generally recognized hospital for treatment of ill or injured persons, or upon assumption of treatment in the office or facility of any person undertaking to treat said injured person or persons, or upon delivery of said injured person or persons into custody of an ambulance attendant.

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Idaho Statutes

TITLE 5
PROCEEDINGS IN CIVIL ACTIONS IN
COURTS OF RECORD
CHAPTER 3
PARTIES TO ACTIONS

5-331. IMMUNITY OF VOLUNTEER AMBULANCE ATTENDANT. No action shall lie or be maintained for civil damages in any court of this state against any person or persons, or group of persons, including volunteer ambulance attendants, who offers and administers first aid or emergency medical attention as a part of his volunteer service as an ambulance attendant to any person or persons utilizing the volunteer services and facilities, unless it can be shown that the person or persons offering or administering first aid or emergency medical attention is guilty of gross negligence in the care or treatment offered or administered, or has treated them in a grossly negligent manner. The immunity described herein shall cease upon delivery of the injured or treated person to either a generally recognized hospital for treatment of ill or injured persons, or upon assumption of treatment in the office or facility of any person undertaking to treat said ill or injured person or persons.

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Idaho Statutes

TITLE 5
PROCEEDINGS IN CIVIL ACTIONS IN
COURTS OF RECORD
CHAPTER 3
PARTIES TO ACTIONS

5-332. CONSENT FOR EMERGENCY MEDICAL TREATMENT. The authorization or refusal of consent for emergency medical treatment under sections 5-330 or 5-331, Idaho Code, shall be governed by chapter 43, title 39, Idaho Code.

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Idaho Statutes

TITLE 6
ACTIONS IN PARTICULAR CASES
CHAPTER 9
TORT CLAIMS AGAINST
GOVERNMENTAL ENTITIES

6-929. LIMITATION OF LIABILITY OF VOLUNTEER FIREMEN. For the purposes of chapter 9, title 6, Idaho Code, a volunteer fireman is an employee of a governmental entity. A "volunteer fireman" means any person who contributes his services to a volunteer fire department organized pursuant to chapter 14, title 31, Idaho Code, or a county mutual fire insurance company organized pursuant to chapter 31, title 41, Idaho Code, or a volunteer fire association.

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Idaho Statutes

TITLE 39
HEALTH AND SAFETY
CHAPTER 71

HAZARDOUS SUBSTANCE EMERGENCY RESPONSE ACT

39-7113. PERSONS RENDERING ASSISTANCE RELATING TO HAZARDOUS SUBSTANCE INCIDENTS -- GOOD SAMARITAN LIMITED IMMUNITY. (1) Consistent with the provisions of subsections (2) and (3) of this section:

- (a) The state shall be liable for the acts or omissions of the state emergency response teams responding to a hazardous substance incident.
- (b) The designating or requesting city or county shall be liable for the acts or omissions of a local emergency response authority responding to a hazardous substance incident within its jurisdiction.

(2) Notwithstanding any provision of law to the contrary, any state emergency response team, local emergency response authority or other person who responds to a hazardous substance incident at the request of an incident commander shall not be subject to civil liability for assistance or advice, except as provided in subsection (3) of this section.

(3) The exemption from civil liability provided in this section shall not apply to:

- (a) An act or omission that caused in whole or in part such hazardous substance incident or a person who may otherwise be liable therefor; or
- (b) Any person who has acted in a grossly negligent, reckless, or intentional manner.

(4) Nothing in this section shall be construed to abrogate or limit the immunity granted to governmental entities pursuant to chapter 9, title 6, Idaho Code.

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Idaho Statutes

TITLE 39
HEALTH AND SAFETY
CHAPTER 44

HAZARDOUS WASTE MANAGEMENT

39-4421. GOOD SAMARITAN PROTECTION. (1) Notwithstanding any provision of law to the contrary, no person who provides assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened leakage, seepage, or other release of hazardous waste, or in preventing, cleaning up, or disposing of or in attempting to prevent, clean up or dispose of any such leakage, seepage or other release, shall be subject to civil liabilities or penalties of any type.

(2) The immunities provided in subsection (1) of this section above shall not apply to any person:

(a) Whose act or omission caused in whole or in part such actual or threatened leakage, seepage or other release and who would otherwise be liable therefor; or

(b) Who receives compensation other than reimbursement for out-of-pocket expenses for services in rendering such assistance or advice.

(3) Nothing in section (1) above shall be construed to limit or otherwise affect the liability of any person for damages resulting from such person's gross negligence, or from such person's reckless, wanton, or intentional misconduct.

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Idaho Statutes

TITLE 39
HEALTH AND SAFETY
CHAPTER 77

VOLUNTEER HEALTH CARE PROVIDER IMMUNITY

39-7701. LEGISLATIVE FINDINGS. The legislature of the state of Idaho finds that access to high quality health care services is a concern of all persons. However, access to such services is severely limited for some residents of the state, particularly those who reside in remote, rural areas or in the urban areas. Physicians and other health care professionals have traditionally worked to assure broad access to health care services and many are willing to volunteer their services to address the health care needs of Idahoans who may otherwise not be able to obtain such services. The public policy of this state is to encourage and facilitate voluntary provision of health care services.

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Idaho Statutes

TITLE 39
HEALTH AND SAFETY
CHAPTER 77

VOLUNTEER HEALTH CARE PROVIDER IMMUNITY

39-7702. DEFINITIONS. As used in this chapter:

(1) "Compensation" is any remuneration, whether by way of salary, fee or otherwise, for health care services rendered. Compensation does not include actual and necessary expenses that are incurred by a volunteer health care provider in connection with the services provided or the duties performed by the health care provider on behalf of a free clinic, and that are reimbursed to the volunteer health care provider.

(2) "Free medical clinic" means a facility other than a hospital or health care provider's office which is an organized community-based program, registered with the department of health and welfare, at which primary medical care is provided without charge to individuals unable to pay for it, and at which the care provided does not include the use of general anesthesia or require an overnight stay in a health care facility.

(3) "Health care provider" means any physician, dentist, optometrist, physician assistant or nurse who is licensed, certified, registered or otherwise authorized to practice in Idaho.

(4) "Voluntary provision of health care services" means providing professional services by a health care provider without compensation.

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Idaho Statutes

TITLE 39
HEALTH AND SAFETY
CHAPTER 77

VOLUNTEER HEALTH CARE PROVIDER IMMUNITY

39-7703. IMMUNITY FROM LIABILITY FOR HEALTH CARE PROVIDERS PROVIDING CHARITABLE MEDICAL CARE. (1) Any health care provider who voluntarily provides needed medical or health care services to any person at a free medical clinic without compensation or the expectation of compensation due to the inability of such person to pay for the services shall be immune from liability for any civil action arising out of the provision of such medical or health services. This section shall not extend immunity to the health care provider for any acts constituting intentional, willful or grossly negligent conduct or to acts by a health care provider which are outside the scope of practice authorized by the provider's licensure, certification or registration.

(2) Immunity pursuant to subsection (1) of this section shall apply only if the health care provider and the patient execute a written waiver in advance of the rendering of such medical services specifying that such services are provided without the expectation of compensation and that the health care provider shall be immune as specified herein.

(3) Nothing in this section shall prohibit a free medical clinic from accepting voluntary contributions for health care services provided to a patient who has acknowledged his or her ability and willingness to pay a portion of the value of the health care services provided. Any voluntary contribution collected for providing care at a free medical clinic shall be used only to pay overhead expenses of operating the clinic. No portion of any moneys collected shall be used to provide compensation to any health care provider.

(4) If a health care provider is insured for liability for negligent acts or omissions arising from providing health care services at a free clinic, the immunity provided in subsection (1) of this section is waived, provided however, the amount recovered shall not exceed the limits of such applicable insurance coverage.

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Idaho Statutes

TITLE 39
HEALTH AND SAFETY
CHAPTER 77

VOLUNTEER HEALTH CARE PROVIDER IMMUNITY

39-7704. REGISTRATION OF FREE MEDICAL CLINICS -- REQUIREMENTS. (1) Before providing volunteer health care services in this state, a free medical clinic shall register with the department of health and welfare by submitting a registration fee of fifty dollars (\$50.00) and filing a registration form that shall contain:

- (a) The name of the free clinic and sponsoring organization, if any;
- (b) The name of the principal individual or individuals who are the officers or organizational officials responsible for the operation of the free clinic or sponsoring organization, if any;
- (c) The address, including street, city, zip code and county, of the free clinic;
- (d) Telephone number;
- (e) Such additional information as the department may require.

(2) Each free clinic shall maintain a list of health care providers associated with its provision of voluntary health care services. For each such health care provider, the free clinic shall maintain a copy of a current license, certificate or registration and shall further require each health care provider to attest in writing that such provider's license, certificate or registration is not suspended or revoked pursuant to disciplinary proceedings in any jurisdiction.

(3) The free clinic shall maintain such records for a period of at least five (5) years following the provision of health care services and shall furnish such records upon request to the department.

(4) Compliance with subsections (1) and (2) of this section shall be prima facie evidence that the free clinic has exercised due care in its selection of health care providers and shall be immune from suit for negligent acts or omissions as provided in subsection (1) of section 39-7703, Idaho Code.

(5) The department may revoke the registration of any free clinic who fails to comply with the requirements of subsections (1) through (4) of this section. Any such revocation shall be conducted in accordance with the administrative procedure act.

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Idaho Statutes

TITLE 39
HEALTH AND SAFETY
CHAPTER 77

VOLUNTEER HEALTH CARE PROVIDER IMMUNITY

39-7705. COSTS AND FEES. Notwithstanding any other provision of law to the contrary, if a party names as a defendant a health care provider who has immunity pursuant to section 39-7703, Idaho Code, in a suit alleging willful or intentional misconduct or gross negligence arising out of treatment at a free clinic which qualifies for immunity pursuant to section 39-7703, Idaho Code, and the trial judge dismisses the complaint or grants a defendant's motion for judgment on the pleadings, or directs a verdict for a defendant, or grants a defendant's motion for judgment notwithstanding the verdict, or at any point in the proceedings grants a plaintiff's motion to discontinue the action against the defendant, the defendant shall be entitled to full costs and reasonable attorney's fees expended in connection with the defendant's defense of the action. If good reason is shown, the trial judge may suspend the operation of this section.

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Idaho Statutes

TITLE 46
MILITIA AND MILITARY AFFAIRS
CHAPTER 10

STATE DISASTER PREPAREDNESS ACT

46-1017. IMMUNITY. Neither the state, nor the bureau, nor any political subdivision thereof nor other agencies, nor, except in cases of willful misconduct, the agents, employees or representatives of any of them engaged in any civil defense, disaster or emergency and the planning or preparation for the same, or disaster or emergency relief activities, acting under proper authority, nor, except in cases of willful misconduct or gross negligence, any person, firm, corporation or entity under contract with them to provide equipment or work to be used in civil defense, disaster or emergency planning, preparation or relief, while complying with or attempting to comply with this act or any rule or regulation promulgated pursuant to the provisions of the act, shall be liable for the death of or any injury to persons or damage to property as a result of such activity. The provisions of this section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under this act or under the worker's compensation law or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of congress.

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Idaho Statutes

TITLE 54 PROFESSIONS, VOCATIONS, AND BUSINESSES CHAPTER 18

PHYSICIANS AND SURGEONS

54-1804. UNLICENSED PRACTICE -- PENALTIES AND REMEDIES RELATING TO UNLICENSED PRACTICE. (1) Under the circumstances described and subject in each case to limitations stated, the following persons, though not holding a license to practice medicine in this state, may engage in activities included in the practice of medicine:

- (a) A medical officer of the armed forces of the United States, of the United States public health service, or of the veteran's administration, while engaged in the performance of his official duties;
- (b) A person residing in another state or country and authorized to practice medicine there, who is called in consultation by a person licensed in this state to practice medicine, or who for the purpose of furthering medical education is invited into this state to conduct a lecture, clinic, or demonstration, while engaged in activities in connection with the consultation, lecture, clinic, or demonstration, so long as he does not open an office or appoint a place to meet patients or receive calls in this state;
- (c) A person authorized to practice medicine in another state or country while rendering medical care in a time of disaster or while caring for an ill or injured person at the scene of an emergency and while continuing to care for such person;
- (d) An extern, intern or resident who is registered with the board as provided in this chapter and while engaged in programs authorized pursuant to rules of the board or a physician assistant licensed by the board;
- (e) A person authorized or licensed by this state to engage in activities which may involve the practice of medicine;
- (f) A person engaged in good faith in the practice of the religious tenets of any church or religious beliefs;
- (g) A person administering a remedy, diagnostic procedure or advice as specifically directed by a physician;
- (h) A person rendering aid in an emergency, where no fee for the service is contemplated, charged or received;
- (i) A person administering a family remedy to a member of the family;
- (j) A person who administers treatment or provides advice regarding the human body and its functions that:
 - (i) Does not use legend drugs or prescription drugs in such practice;
 - (ii) Uses natural elements such as air, heat, water and light;
 - (iii) Only uses class I or class II nonprescription, approved, medical devices as defined in section 513 of the federal food, drug and cosmetic act;
 - (iv) Only uses vitamins, minerals, herbs, natural food products and their extracts, and nutritional supplements; and who
 - (v) Does not perform surgery;
 - (vi) Requires each person receiving services to sign a declaration of informed consent which includes an overview of the health care provider's education which states that the health care provider is not an "M.D." or "D.O." and is not licensed under the provisions of this chapter.

(2) Except as provided in subsection (1) of this section, it shall constitute a felony for any person to practice medicine in this state without a license and upon conviction thereof shall be imprisoned in the state prison

for a period not to exceed five (5) years, or shall be fined not more than ten thousand dollars (\$10,000), or shall be punished by both such fine and imprisonment.

(3) Except as provided in subsections (1)(a), (1)(b), and (1)(c) above, it is unlawful for any person to assume or use the title or designation "medical doctor," "medical physician," "osteopathic doctor," "osteopathic physician," "M.D." or "D.O." or any other title, designation, words, letters, abbreviation, sign, card, or device to indicate to the public that such person is licensed to practice medicine pursuant to this chapter unless such person is so licensed, and upon conviction thereof, such person shall be imprisoned not to exceed one (1) year, or shall be fined not more than three thousand dollars (\$3,000), or shall be punished by both fine and imprisonment.

(4) When a person has been the recipient of services constituting the unlawful practice of medicine, whether or not he knew the rendition of the services was unlawful, proof of the rendition of such unlawful services by the recipient or his personal representative in an action against the provider of such services for damages allegedly caused by the services constitutes prima facie evidence of negligence shifting the burden of proof to such provider of unlawful services. The following damages in addition to any other remedies provided by law may be recovered in such an action:

- (a) The amount of any fees paid for the unlawful services.
- (b) Reasonable attorney fees and court costs.

(5) The board shall refer all violations of this section made known to it to appropriate prosecuting attorneys. The board may render assistance to a prosecuting attorney in the prosecution of a case pursuant to this section.

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